IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15162 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANTLAL JIVANLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15162 of 2004

MR AJ PATEL for Petitioner No. 1-4

MR NAGESH SOOD, AGP for Respondent No. 1-2

MR TUSHAR MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/02/2005

ORAL JUDGEMENT

#. Rule. Mr.Sood, learned AGP, waives service of rule

on behalf of respondent Nos.1 and 2 and Mr.Tushar Mehta waives service of rule for respondent No.3.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 9.11.2004 in Revision Application No.65 of 2004 in dismissing the same and confirming the order passed by the Collector, Surat dated 11.9.2004 in RTS Appeal No.102 of 2003 in allowing the same and quashing and setting aside the order passed by the Deputy Collector, Choryasi Prant, Surat dated 19.4.2003 in RTS Appeal No.59 of 2001 in respect of revenue entry No.2081 dated 24.11.1995.

#. The land bearing Survey No.399/2, new Survey No.362/2 was owned by Bai Mithi d/o Nanubhai Jerambhai situated at village Vesu, Taluka Choryasi, District Surat. It is the case of the petitioners that the said Bai Mithi has executed a Will during her lifetime and by the aforesaid Will, she bequeathed the aforesaid land to the petitioners jointly on the death of said Bai Mithi on 4.7.1995. It is the case of the petitioners that the petitioners became the owners of the aforesaid land by virtue of the aforesaid Will and necessary entry in the revenue record being 2081 dated 24.11.1995 was mutated. Being aggrieved and dissatisfied with the aforesaid entry, respondent No.3 preferred the appeal, being RTS Appeal No.59 of 2001 before the Deputy Collector, Choryasi Prant, Surat, who by his order dated 19.4.2003 dismissed the said appeal confirming the entry No.2081 dated 24.11.1995. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Choryasi Prant, Surat dated 19.4.2003 in RTS Appeal No.59 of 2001, respondent No.3 preferred RTS Appeal No.102 of 2003 before the Collector and the Collector, Surat by his order dated 11.9.2004 allowed the said appeal by quashing and setting aside the order passed by the Deputy Collector, Choryasi Prant, Surat dated 19.4.2003 in RTS Appeal No.59 of 2001 and also quashed and set aside the entry No.2081 dated 24.11.1995. Being aggrieved and dissatisfied with the order passed by the Collector, Surat dated 11.9.2004 in RTS Appeal No.102 of 2003, the petitioners preferred the revision application No.65 of 2004 before the Secretary (Appeals), Revenue Department, State of Gujarat and the Secretary (Appeals) by his judgment and order dated 10.11.2004 dismissed the said

revision application confirming the order passed by the Collector, Surat dated 11.9.2004 in RTS Appeal No.102 of 2003 and also confirmed the order with regard to setting aside the entry No.2081 dated 24.11.1995, which has given rise to the present petition under Article 226/227 of the Constitution of India.

#. Mr.A.J.Patel, learned advocate appearing for the petitioners, has vehemently submitted that the revenue authority exercising the powers under the Code and the Rules in RTS proceedings has no jurisdiction to consider the legality and validity of the Will and/or to enter into the dispute with regard to the title and the revenue authority is bound to give effect to the Will in the revenue record. It is submitted that the revenue authority has no jurisdiction to consider the breach of any other enactment while considering the entry in RTS proceedings. Relying upon the decisions of this Court in the case of Evergreen Apartment Cooperative Housing Society V/s Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) G.L.R. 113 and the decision in the case of Janardhan D Patel V/s State of Gujarat, reported in 1997 (1) G.L.R. 50, Mr.Patel has requested to allow the present petition.

#. On the other-hand, Mr.Tushar Mehta for respondent No.3 as well as Mr.Sood, learned AGP for respondent Nos.1 and 2 have opposed the present petition. Relying upon the subsequent judgment of this Court (Coram: Jayant Patel,J) in the case of Jayantilal Jethalal Soni V/s State of Gujarat rendered in Special Civil Application No. 12547 of 2004 dated 28.09.2004, it is submitted that when it comes to the knowledge of the revenue authority that by virtue of the aforesaid transaction, there will be a breach of any other enactment, then the revenue authority can consider the same and have prima facie finding which can be reflected in the revenue record and the same may be subject to the ultimate outcome of the proceedings which may be initiated for the breach of any other enactment. It is submitted that so far as the Will in question is concerned, it is absolutely bogus and forged one and, in fact, respondent No.3 has not signed on the said Will. It is further submitted that, in fact, the civil suit is already filed now in the court of the learned Civil Judge (Senior Division), Surat being Regular Civil Suit No.460 of 2004 for declaration that the father of the petitioners is only heir of the original land owner Bai Mithi and that he has become absolute owner and further prayer is also made in the said suit to declare the Will in question as ineffective and not binding to the plaintiff. Thus, legality and

validity of the Will itself is under challenge before the Civil Court, and, therefore, requested to dismiss the present petition.

#. By catena of judgments, the Honourable Supreme Court and this Court have clearly held that the entry in the revenue record does not confer any right, title or interest and it is for fiscal purpose for the purpose of collecting the revenue. Merely on the basis of the entry, the person in whose favour the entry is made does not get any right, title or interest and the entry in the revenue record is always subject to the ultimate outcome of the rights crystallized by the competent civil court. As stated hereinabove, in the present case, Regular Civil Suit No.460 of 2004 is already now pending in the court of the learned Civil Judge (Senior Division), Surat in which the very Will is under challenge. The learned Single Judge of this Court in the case of Jayantilal Jethalal Soni (supra) in para 8 of the judgment has held as under.:

"8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgment, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be

> taken by the competent authority under the other concerned enactment. This court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

#. Considering the aforesaid facts and the judgments of this Court and considering the fact that now the civil suit is already pending before the competent civil Court in which very Will is under challenge and also considering the fact that the entry in the revenue record does not confer any right, title or interest, if the following directions are issued, it will meet the ends of justice. :

(i) The entry in the revenue record with regard to

the land in question is ordered to be subject to the ultimate outcome of Regular Civil Suit No.460 of 2004 pending in the court of the learned Civil Judge (Senior Division), Surat and the revenue authority is directed to give effect to the judgment and decree that may be passed by the Civil Court in the aforesaid suit on conclusion of the trial;

(ii) The orders passed by the authorities below are modified to the extent that status quo with regard to the revenue record of the land in question shall be maintained and the same shall be subject to the outcome of Regular Civil Suit No.460 of 2004 pending in the court of the learned Civil Judge (Senior Division), Surat and the revenue authority is directed to make additional entry to the effect that the entries in the revenue record are subject to the ultimate outcome by the Civil Court in the aforesaid suit. It is, however, made clear that this will not preclude the appropriate authority to initiate the proceedings in accordance with law if it is found that by virtue of the aforesaid transaction by the aforesaid Will, there will be a breach of any other enactment, and as and when such proceedings are initiated, it will be open for the parties to defend the same and shall raise all contentions which are available to them under the law.

#. For the reasons stated above and in view of the aforesaid directions and observations, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)